

GUIDANCE FOR SUBMISSION OF PROPOSALS TO BIS FOR A COMPLIANCE FEE UNDER THE WEEE REGULATIONS 2013.

Introduction:

Regulation 76 of the 2013 WEEE Regulations allows the Secretary of State to set a compliance fee mechanism for a compliance period, as an alternative way for Producer Compliance Schemes (PCS) to achieve compliance as set out in Regulation 33.

This document provides guidance for organisations that are considering submission of a proposal to the Secretary of State for consideration.

Regulation 76 – Approval of compliance fee; methodology and administration

76 —(1) The Secretary of State may, after consultation with such persons or bodies as appear to him representative of the interests concerned, approve—

- (a) a methodology for the calculation of a compliance fee; and
- (b) the appointment of a third party to oversee the administration of that compliance fee.

(2) Any person or body referred to in paragraph (1) may submit a proposed methodology to the Secretary of State by no later than 30th September in the compliance period in which the methodology will apply.

(3) The Secretary of State will publish the methodology for the calculation of the compliance fee.

(4) Any methodology approved by the Secretary of State in accordance with paragraph (1) will take into account the different costs associated with the collection, treatment, recovery and environmentally sound disposal of each of the WEEE collection streams and will be set at a level which encourages schemes to take all reasonable steps to meet their collection target without recourse to the compliance fee.

(5) The Secretary of State will only approve one methodology in each compliance period.

Rationale:

The 2013 WEEE Regulations establish a system of household WEEE collection targets for Producer Compliance Schemes with the option of payment of a compliance fee should a PCS fail to achieve its collection targets. Payment of the fee is a legitimate form of compliance. The existence of a compliance fee is intended to discourage PCSs collecting WEEE significantly above their targets and then seeking to sell that surplus at excessive prices to PCSs that are short of their target amount in any category for which they have obligations.

Key Principles:

The methodology should:

- be established in a way that encourages compliance through collection and treatment of WEEE by PCSs via DCF collections, Regulation 43 or 52;

- reflect the different market economics associated with collection, treatment and environmentally sound disposal of the 6 WEEE collection streams;
- be stream specific, ie a PCS short of their targets by 10 tonnes of Display and 15 tonnes of Cooling will pay a fee specific to their shortage in each stream rather than a generic fee for a shortage of 25 tonnes. A negligible or zero fee might be appropriate in some circumstances;
- ensure the proposal for disbursement of funds recognises the critical role that local authorities (and their partner organisations) play in WEEE collections;
- ensure the methodology for disbursement of funds seeks to encourage increased volumes of separately collected WEEE and increased recycling in line with BATTRT requirements and legitimate re-use;
- set out the governance arrangements for the receipt and disbursement of any compliance fees paid;
- Ensure payments received establish a fund from which disbursements will be made and recover the costs of administering the compliance fee process;
- Set out how disbursements of compliance fees will be validated with regards to their intended use.

Key features of Proposals

Proposals must set out:

- a methodology for calculation of a compliance fee across each WEEE collection stream and argument/evidence in support of that methodology;
- the proposed operator that will administer the Compliance Fee Process and evidence of their suitability to run it;
- how the overhead costs of calculating, setting up and administering the compliance fee mechanism and disbursement of funds will be met. This should include provision for a situation of minimal up take or zero up take amongst PCSs;
- details of the mechanism for dispersal of funds collected and how validation will take place to show the funds have contributed to higher levels of collection, recycling and re-use of WEEE. This must address the scenario of low up take and minimal levels of funds being collected;
- the mechanism by which PCSs can pay the fee, what information must be provided and how commercial confidentiality will be maintained;
- the mechanism for ensuring the environment agencies receive necessary evidence that an appropriate compliance fee has been paid by PCSs. The agencies must be in a position, that when accepting a Declaration of Compliance from a PCS, that this could be comprised of WEEE evidence and payment of a compliance fee. Validation of payment of the compliance fee must not place significant additional burdens on the agencies;
- evidence of auditing arrangements that ensures declarations of payments by PCSs are robust;
- Extent to which interested parties including producers, local authorities or other organisations had been consulted in developing the proposal.

Timing:

Proposals must be submitted by 30 September each year that the sector requires a compliance fee to be in place. Proposals received after that date will not be considered.

All proposals received will be published and the subject of a consultation with interested parties (notably producers, AATFs, PCSs, local authorities, waste management companies and the re-use sector). The exact timing of the consultation will depend on the number of proposals received. The consultation period will be a minimum of four weeks.

Any compliance fee methodology and compliance fee scheme operator approved by the Secretary of State will be announced by mid February, following the compliance period to which the compliance fees will be applicable. This will allow sufficient time for PCSs to pay a compliance fee as appropriate and include evidence of payment with their Declaration of Compliance by deadline date of 31st March.

Confidentiality and Data Protection

Information provided in proposals, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard any of the information in your proposal as confidential. If we receive a request for disclosure of that information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Submission

Proposals should be submitted to:

Graeme Vickery
WEEE Policy Team
Department for Business Innovation and Skills
1 Victoria Street
London SW1H 0ET

Tel 020 7215 5000
Fax 020 7215 8242
Email weee@bis.gsi.gov.uk